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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,953	05/22/2006	Jung Min Lee	L60.12-0004	9282
27367 7590 10/28/2008 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3244				
EXAMINER STEPHENS III, JOSE S				
ART UNIT		PAPER NUMBER		
3728				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/579,953

**Applicant(s)**

LEE, JUNG MIN

**Examiner**

JOSE S. STEPHENS III

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-13 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 22 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's amendment filed 31 July 2008. Claims 1-13 are pending in the application, where claim 13 is new.

### ***Claim Objections***

2. Claims 1 and 13 are objected to because of the following informalities: "a bottle" should be changed to "the container" in line 14 of claim 1; and "bottle" should be changed to "container" in line 2 of claim 13. Appropriate corrections are required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "product" is vague and indefinite in claim 12. It is unclear what is meant by the term "product".

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-6, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kachur et al. (US Patent 3,924,741).

With respect to claims 1 and 3, figures 1-5 of Kachur et al. teaches a cap containing a secondary material 28, comprising a fixing member 2 fixed on a container 1, the fixing member having a hollow main body and a supporting tube (see figure 3) extending downward from an inner surface of the hollow main body, the supporting tube having a material exhausting portion (see figure 3) and a seal member 8 formed on the lower end of the supporting tube; and a movable member (see figure 3) coupled to the fixing member, the movable member having a main body coupled on the main body of the fixing member and a tube extending downward from the main body to define a storage chamber secondary material (see figure 3), the tube being provided with an opened lower end through which the secondary material filled in the storage chamber, the opened lower end of the tube being tightly interlocked with the seal member formed on the supporting tube of the fixing member after the secondary material is filled in the storage chamber and the movable member is coupled to the fixing member and being

released from the seal member so that the secondary material is mixed with a primary material 27 contained in the container by being exhausted into the container through the material exhausting portion formed on the supporting tube of the fixing member when the movable member is moved relative to the fixing member thereby removing the seal and providing an opening between the opened lower end of the tube and the seal member thereby releasing the secondary material from the storage chamber into the primary material. Kachur et al. does not teach the movable member is threadably coupled to the fixing member. Official Notice is taken that it is old and conventional to threadably connect two members. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention in view of the Official Notice to threadably connect the moving member to the fixing member of Kachur et al. to provide a more secure connection between the members. When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

With respect to claim 2, figure 4 of Kachur et al. teaches the hollow main body of the fixing member includes a sidewall 6 fixed on the container and a spouting portion (very top of the fixing member) extending upward from the sidewall, the movable member is coupled to the spouting portion.

With respect to claim 4, figure 2 of Kachur et al. teaches the tube is separated from the main body, the tube being provided with a circumferential top projection 17 that

is engaged with a hook projection 24 extending downward from a bottom of the main body.

With respect to claim 5, figure 2 of Kachur et al. teaches the tube is provided with a circumferential bottom projection that will be hooked on a circumferential projection formed on an inner surface of the supporting tube of the fixing member when the movable member is removed from the fixing member (see bottom of tube as is engages with the seal member).

With respect to claim 6, Kachur et al. does not teach a stirring projection pin formed on the seal member to stir the secondary material when the movable member is removed from the fixing member. However, Official Notice is taken that it is old and conventional to provide a stirring member on containers for to stir up and mix liquids or other material. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention in view of the Official Notice to provide the seal member with a stirring member to stir and mix the secondary material as the movable member is removed from the fixing member.

With respect to claim 11, figure 2 of Kachur et al. teaches the seal member is separately prepared from the supporting tube and fixedly assembled on the supporting tube.

With respect to claim 12, the product is assumed to be the combination of the primary and secondary materials, Kachur et al. teaches a product employing a cap.

With respect to claim 13, figure 2 of Kachur et al. teaches the fixing member includes threads and is configured to be screwed onto the container.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kachur et al. (US Patent 3,924,741) as applied to claim 1 above, and further in view of Ma (US 2002/0033374).

With respect to claim 7, Kachur et al. does not teach a first tamper-proof formed on a lower end of the hollow main body of the fixing member and a second tamper-proof formed on a main body of the movable member. However, figure 1 of Ma teaches a threaded member 14 that is connected to a tamper-evidencing band 18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fixing and movable members of Kachur et al. by incorporating the teachings of Ma to indicate whether or not the fixing and movable members have been compromised.

9. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kachur et al. (US Patent 3,924,741) as applied to claim 1 above, and further in view of Frutin (US Patent 5,971,140).

With respect to claims 8 and 9, Kachur et al. does not teach a seal enhancement member (O-ring) disposed on a bottom of the supporting tube. However, figure 1 of Frutin teaches providing a structure with an O-ring to prevent liquid from leaking. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the supporting tube of Kachur et al. by incorporating an O-ring, as taught by Frutin, to prevent liquid from leaking into the container.

With respect to claim 10, the combination of Kachur et al. and Frutin discloses the claimed invention except for the O-ring is formed of silicon. It would have been

obvious to one having ordinary skill in the art at the time the invention was made to from the O-ring of silicon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are caps analogous to applicant's instant invention.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JILA M MOHANDESI/  
Primary Examiner, Art Unit 3728

JSS  
10/27/08